92-1887

No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1992

FERRIS L. QUILLER,

Petitioner,

vs.

SID MILES, Commissioner,
Georgia Department of Public Safety,

Respondent.

Petition For The Writ Of Certiorari
To The Supreme Court Of The State of Georgia

PETITION FOR THE WRIT OF CERTIORARI

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May 25, 1993

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QUESTIONS PRESENTED FOR REVIEW

1. Does Georgia's drug conviction driver's license suspension statute (O.C.G.A. § 40-5-75) which requires an indefinite suspension of a person's driver's license upon a drug possession conviction without regard to whether a motor vehicle was involved, violate the due process and equal protection guarantees of the 5th and 14th Amendments to the United States Constitution?

2. Was petitioner denied due process when his driver's license was indefinitely suspended based on the drug conviction driver's license suspension provisions of O.C.G.A. § 40-5-75 where he was not convicted of a crime included within the coverage of the statute?

PARTIES TO THE PROCEEDING

The caption contains the names of all parties to this proceeding.

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No. _____

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FERRIS L. QUILLER,

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Petition For The Writ Of Certiorari
To The Supreme Court Of The State of Georgia

PETITION FOR THE WRIT OF CERTIORARI

Petitioner FERRIS L. QUILLER prays that the Writ of Certiorari issue to the Georgia Supreme Court to review the decision of that court entered February 24, 1993.

OPINIONS BELOW

Reproduced in the appendix to the petition are (1) the Indictment, Verdict and Sentence in Upson County Superior Court criminal case number 91-R-27 entitled *State of Georgia v. Ferris Quiller* charging sale of cocaine,

(2) decision of Department of Public Safety hearing officer dated February 13, 1992, (3) the decision of the Superior Court of Upson County, Georgia, dated June 3, 1992, (4) the decision of the Georgia Supreme Court dated July 23, 1992, granting discretionary review, (5) the state supreme court's opinion dated February 5, 1993, affirming the judgment below, (6) the state supreme court's order denying reconsideration dated February 24, 1993, and (7) order of same date staying the remittitur.

JURISDICTION

The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1257(a) which authorizes the grant of the writ of certiorari to the highest court of a state in a case where a right, privilege or immunity is specifically claimed under the Constitution of the United States. The Georgia Supreme Court denied petitioner's timely Motion for Reconsideration on February 23, 1993. In accordance with Rule 13(1) & (4) of this court, this petition is filed within ninety (90) days of the entry of the final judgment of the Georgia Supreme Court.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, 5th Amendment:

> No person shall be held to answer for a capital, or other infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war

> or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Constitution of the United States, Fourteenth Amendment Section 1:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall made or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

FERRIS L. QUILLER was the holder of a valid Georgia driver's license issued by the Georgia Department of Public Safety (the Department). In November of 1991, petitioner was convicted of the offense of Sale of Cocaine in violation of O.C.G.A. § 16-13-30(b). No motor vehicle was involved in the commission of this offense. In December of 1991, the Department indefinitely suspended Mr. Quiller's license based on the provisions of O.C.G.A. § 40-5-75. That code section provides in pertinent part as follows:

> The driver's license of any person convicted of possession of a controlled substance or marijuana in violation of subsection (b) of Code Section 16-3-2 or subsection (a) or (j) of Code Section 16-13-30 shall by operation of law be suspended . . .

Petitioner sought judicial review of the Department's decision to the Superior Court of Upson County citing due process and equal protection concerns. The superior court upheld the suspension on June 3, 1992. Thereafter, petitioner sought and was granted a discretionary review by the Georgia Supreme Court. On February 5, 1993, that court affirmed the superior court's decision finding none of petitioner's constitutional rights were infringed upon by the suspension.

REASONS FOR GRANTING THE WRIT

I.

THE GEORGIA DRUG CONVICTION DRIVER'S LICENSE SUSPENSION STATUTE, O.C.G.A. § 40-5-75, VIOLATES DUE PROCESS AND EQUAL PROTECTION BECAUSE IT ARBITRARILY CREATES A CLASSIFICATION OF CITIZENS WHO ARE IRREBUTABLY PRESUMED TO BE A "DIRECT AND IMMEDIATE THREAT TO THE WELFARE AND SAFETY OF THE GENERAL PUBLIC" EVEN WHERE THE FACTS OF A GIVEN CASE DO NOT SUPPORT THAT CONCLUSION.

A government issued license to operate a vehicle on the public highways is one of the most important items possessed by most of the citizens of these United States.

In *Bell v. Burson*, 420 U.S. 535 (1971), this court recognized a driver's license is a valuable property right which may not be taken away by the State without affording the licensee due process. The Georgia Supreme Court itself rightly recognized the paramount importance of a driver's license to most persons in modern society when it held that the deprivation of a driver's license constitutes a significant enough restraint on a person's liberty so as to confer standing to bring a habeas corpus action against the Department. *Hardison v. Martin*, 254 Ga. 719, 334 S.E.2d 161 (1985). (The *Martin* court based its ruling in part on this court's decision in *Jones v. Cunningham*, 371 U.S. 236 (1963).) Legislative enactments affecting such property rights, to pass constitutional muster, must have a proper legislative purpose and be neither arbitrary nor discriminatory. *Nebbia v. New York*, 291 U.S. 502 (1934).

In its examination of O.C.G.A. § 40-5-75, the Georgia Supreme Court found it to have a rational relationship to a proper legislative purpose:

> The state lists the purposes of O.C.G.A. § 40-5-75 as punishment of current offenders, deterrence of future offenders, reduction of the distribution of illegal drugs, and protection of citizens on state roads. The legislature has determined that driving under the influence of drugs "constitute[s] a direct and immediate threat to the welfare and safety of the general public." See O.C.G.A. § 40-5-55(a). We conclude that the desire to ensure safe driving and discourage illegal drug use is reasonably related to the statute's mandatory suspension of driver's licenses and attendance at a drug reduction program. The license suspension reduces the mobility of

> drivers possessing drugs and curtails the transportation of illegal drugs. The drug reduction program decreases the use of drugs.
>
> This rational relationship between the law and legislative purpose exists even when the conviction for a drug offense is not related to the use of a motor vehicle. The suspension of the drug offender's license furthers the state's interest in reducing the sale and distribution of drugs by automobile and in promoting public safety. The legislature could reasonably assume that a person who possesses illegal drugs will use the drugs, that a drug user will drive while under the influence of drugs, and that drug use impairs a driver's judgment. Therefore, the statute does not violate due process.
>
> At pages 3 and 4 of the Opinion.

The Georgia Supreme Court's logic is seriously flawed. There is absolutely no evidence in the record which supports the conclusions reached by the court. Indeed, the undisputed fact that the offense committed by petitioner did not involve a motor vehicle and involved no allegation of actual drug consumption by the petitioner goes only to support the conclusion that petitioner presents no danger to the driving public. Certainly, something more than mere speculation with no reasonable basis in fact as to the validity of underlying assumptions supporting the suspension should be required. As this court has noted before, such judicial inquiries, "must be restricted to the issue whether any state of facts either *known* or which could *reasonably be assumed* afford support for [the legislative act]". *United States v. Carolene*

Products Co., 304 U.S. 144, 154 (1937). Petitioner submits the use of factual assumptions (i.e., "The drug reduction program decreases the use of drugs.") by the court below can not be deemed reasonable when there is no evidence of any statistical studies or even legislative debate before the court.

Moreover, a cornerstone of due process in such cases is the requirement that the licensee be afforded a meaningful opportunity to confront the evidence allegedly supporting the suspension. *Armstrong v. Manzo*, 380 U.S. 545 (1965); *Goldberg v. Kelly*, 397 U.S. 254 (1970). By virtue of the operation of § 40-5-75 a licensee is absolutely precluded from demonstrating that under the particular facts of his case the generally held assumptions are not correct. In essence, an evidentiary presumption of driver unfitness is created which relieves the state of any burden of proof whatsoever. Because the presumption is irrebutable, an impossible burden is shifted to the licensee. This court has recognized the constitutional infirmity of such statutes although not in this precise setting. *Francis v. Franklin*, 471 U.S. 307 (1985).

The Georgia Supreme Court relied, in part, upon precedent from other states notably including *Pennsylvania v. Strunk*, 400 Pa. Super. 25, 582 A.2d 1326 (1990). *Strunk* approved of mandatory driver's license suspensions following underage drinking convictions. However, as Justice Popovich noted in his dissenting opinion, the *Strunk* majority found it necessary to resort to a "singular 'deterrence' approach" to judicial scrutiny to reach the ultimate result in the case. Justice Popovich rightly observed that where the proper rational relationship

analysis is applied, the result is sometimes quite different. 582 A.2d at 1328-29. For example, in *Illinois v. Linder,* 127 Ill.2d 174, 535 N.E.2d 829 (1989), the court determined that where, as here, the criminal conviction did not involve a motor vehicle, a mandatory suspension of the driver's license was both arbitrary and irrational. See also 4 Op. Idaho Att'y Gen. 1, 5 (1984) (concluded that "[l]oss of a driver's license for violation of a law unrelated to driving amounts to an arbitrary forfeiture of a state created property interest without justification.")

The irrationality of the subject statute becomes evident when it is realized that the statute, due to the arbitrary and illogical nature of the classification it creates, bears no relation to the purported purpose of the legislation. According to the Georgia Supreme Court, it purports to address the purpose of "deterring drug use, curtailing the distribution of drugs, and protecting motorists". Opinion at page 5. Yet, the statute, by its terms, only covers a small category of drug related offenses. It purports to penalize only those convicted of "possession of a controlled substance or marijuana in violation of subsection (b) of Code Section 16-13-2 or subsection (a) or (j) of Code Section 16-13-30". Conversely, offenses such as Manufacturing Marijuana (O.C.G.A. § 16-13-30(j)), Unlawful Dispensing of a Controlled Substance (O.C.G.A. § 16-13-41), Soliciting a Person Under 17 in a Controlled Substance Violation (O.C.G.A. § 16-13-30(k)), Sale of Alcoholic Beverages to a Minor (O.C.G.A. § 3-3-23), Unlawful Manufacture, Transport and Receipt of Alcoholic Beverages (O.C.G.A. § 3-3-27), Possession of Non-Tax Paid Distilled Spirits

(O.C.G.A. § 3-3-29), and Having an Open Container in One's Vehicle (O.C.G.A. § 40-6-253) do not subject the offender to a mandatory license suspension. Even those actually convicted of Driving Under the Influence of Intoxicants (O.C.G.A. § 40-6-391) in the first instance do not face a mandatory period of license suspension of this magnitude. In light of these facts, it must be said the classification created under the statute is simply irrational and arbitrary and violates the constitutional guarantees of due process and equal protection.

II.

EVEN ASSUMING O.C.G.A. § 40-5-75 IS CONSTITUTIONAL ON ITS FACE, THE SUSPENSION OF PETITIONER'S DRIVER'S LICENSE BASED THEREON VIOLATES DUE PROCESS BECAUSE PETITIONER WAS NOT CONVICTED OF A CRIME INCLUDED WITHIN THE COVERAGE OF THE STATUTE.

As previously noted, § 40-5-75 mandates the driver's license suspension of persons convicted of "possession of a controlled substance or marijuana in violation of subsection (b) of Code Section 16-13-2 or subsection (a) or (j) of Code Section 16-13-30". Sections 16-13-2 and 16-13-30(j) deal only with marijuana. Section 16-13-30(a) provides as follows:

> Except as authorized by this article, it is unlawful for any person to purchase, *possess*, or have under his control any controlled substance. (emphasis supplied)

The indictment on which petitioner was convicted alleged that he did,

> knowingly *sell* a quantity of cocaine, a controlled substance, in violation of the Georgia Controlled Substances Act. (emphasis supplied)

The conduct alleged in the indictment is specifically proscribed by O.C.G.A. § 16-13-30(b). It provides:

> Except as authorized by this article, it is unlawful for any person to manufacture, deliver, distribute, dispense, administer, *sell*, or possess with intent to distribute any controlled substance. (emphasis supplied)

From a careful reading of the indictment and these statutes it is abundantly clear that the crime for which petitioner was convicted, Sale of Cocaine in violation of O.C.G.A. § 16-13-30(b), is literally not among those specifically set forth under § 40-5-75 as mandating a license suspension.

Petitioner's argument to the Georgia Supreme Court that the use of the statute under these circumstances to revoke his driver's license violated due process was rejected simply as "without merit". Opinion at page 5. However, the decisions of this court indicate this conclusion is not so easily obtained.

As the superior court order observed, the subject statute is penal in nature pursuant to the legislature's "authority to provide penalties and sanctions for criminal behavior." Order at page 2. "Criminal laws are more searchingly examined for vagueness, because the consequences of imprecision are more severe than are pure economic regulation or civil legislation." *Levas & Levas v.*

Village of Antioch, Ill., 684 F.2d 446, 452 (7th Cir. 1982). As this court has held:

> No one may be required at peril of life, liberty, or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commends or forbids.
>
> *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939).

The Georgia Supreme Court has impermissibly expanded the parameters of the statute to include not only those convicted of the offenses itemized in the statute but also all "current drug offenders". (Opinion at page 3). While that may have been the legislative intent, it is not consistent with a literal reading of the statute. At any rate, any uncertainty existing in the statute may not be rectified by statutory construction. If the language is awkward or clumsy or lacking in precision, the statute must be strictly construed against the state and may not be cured by looking to the intent of the legislature. *Connally v. General Constr. Co.*, 269 U.S. 347 (1964); *McBoyle v. United States*, 283 U.S. 25 (1931). This literal reading requirement holds true even where a literal application of a statute could lead to absurd results. *United States v. Cardiff*, 355 U.S. 174 (1952). Perhaps the concept was best expressed by the first Chief Justice of this court when he wrote,

> It would be dangerous, indeed, to carry the principal, that a case which is within the reasoner mischief of a statute, is within its provisions, so far as to punish a crime not enumerated in the statute, because it is of equal

> atrocity, or of kindred character, with those which are enumerated.

United States v. Wiltberger, 18 U.S. 76, 96 (1820).

CONCLUSION

This petition for certiorari provides an excellent opportunity for this court to define the limits to which the states may go in making determinations as to whom may hold a driver's license. Petitioner submits the Georgia scheme violates due process and equal protection because it arbitrarily and irrationally creates a class of citizens denied driving privileges based on unsupported speculation without regard to the actual facts of the case bearing on the licensee's driving fitness. The due process concerns present are compounded by the inability of the licensee to rebut the presumptions created by the statute in question.

But even assuming arguendo the law is constitutional on its face, its application against the petitioner was improper because he was literally not convicted of one of the crimes enumerated in the statute. The Georgia Supreme Court's expansion of the scope of the statute to include him was clearly violative of the 5th and 14th Amendment due process protections.

The petition for certiorari merits acceptance. It should be granted, a full review conducted and the decision below reversed.

RESPECTFULLY SUBMITTED,

VIRGIL L. BROWN
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BENTLEY C. ADAMS, III
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APPENDIX

S92A1427

SUPREME COURT OF GEORGIA

ATLANTA February 24, 1993

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

BY: Fletcher, J.

The following direction was given:

FERRIS L. QUILLER v. RONALD BOWMAN, COMR.

Upon consideration of the motion for a stay of this court's remittitur in order that an appeal or an application for certiorari may be filed in the Supreme Court of the United States to obtain a review of this court's judgment rendered in this case on Feb. 24, 1993, such motion is hereby granted, subject to the following conditions:

(1) The clerk of this court is directed to withhold the transmittal of such remittitur to the trial court for ninety days from the date of this court's judgment.

(2) The clerk of this court is directed to transmit such remittitur to the trial court not later than the ninety-fifth day from the date of this court's judgment, provided that the clerk shall continue to withhold the transmittal of such remittitur if the clerk is notified in writing that an appeal or application for certiorari has been timely filed in the Supreme Court of the United States. Upon the timely filing of such appeal or application in the Supreme Court of the United States, the clerk is directed to

withhold the transmittal of such remittitur until the final disposition of the case by that court.

/s/ Norman S. Fletcher
Justice Norman S. Fletcher

SUPREME COURT OF GEORGIA

ATLANTA FEBRUARY 24, 1993

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

Case No. S92A1427

FERRIS L. QUILLER V. RONALD BOWMAN, COMR.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

Clark, C.J., Hunt, P.J., Benham and Sears-Collins, JJ., and Judge W.J. Forehand concur. Hunstein, J., not participating.

SUPREME COURT OF THE
STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court affixed the day and year last above written.

Sherie M. Welch, Clerk.

In the Supreme Court of Georgia

Decided: FEB 5, 1993

S92A1427. QUILLER v. BOWMAN.

FLETCHER, Justice.

We granted this discretionary application to consider the constitutionality of the statute requiring the suspension of the driver's license of any person convicted of the possession of a controlled substance or marijuana. We hold that OCGA § 40-5-75 does not violate the due process or equal protection clauses of the United States or Georgia Constitutions and affirm.

Ferris L. Quiller was convicted in November 1991 for a violation of the Georgia Controlled Substances Act and sentenced to 30 days in the county jail and five years probation. His crime did not involve a motor vehicle. Based on his conviction, the Department of Public Safety notified Quiller that his driver's license was suspended indefinitely, but could be reinstated after a certain time if he completed a state-approved drug use risk reduction program. A hearing officer upheld the suspension of Quiller's license based on OCGA § 40-5-75. Quiller appealed to the superior court, which found the statute constitutional. Quiller appeals, arguing that the statute violates substantive due process and equal protection by requiring the department to suspend driver's licenses for the conviction of drug offenses that do not involve motor vehicles.[1]

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[1] Quiller is not challenging the statute as a violation of procedural due process. He received both adequate notice of the suspension and an administrative hearing. We have held that a

1. "The [s]tate has the authority under its police powers to enact reasonable laws regulating the use and operation of motor vehicles upon public highways." *Dennis v. State*, 226 Ga. 341, 342 (175 SE2d 17) (1970). The challenged statute provides:

> The driver's license of any person convicted of possession of a controlled substance or marijuana in violation of subsection (b) of Code Section 16-3-2 or subsection (a) or (j) of Code Section 16-13-30 shall by operation of law be suspended.

OCGA § 40-5-75(a).[2] The state may reinstate the license only if the person completes a DUI Alcohol or Drug Risk Reduction Project and pays a restoration fee. Id. (a) (1).

The Georgia Constitution states that "[n]o person shall be deprived of life, liberty, or property except by due process of law." Ga. Const. Art. I, Sec. I, Par. I (1983); see U.S. Const. amend. XIV, sec. 1. A driver's license is a property interest that may not be denied without due process of law. See *Bell v. Burson*, 402 U.S. 535, 539 (91 SC 1586, 29 LE2d 90) (1971). The license grants persons the

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similar state scheme of an administrative appeal and de novo review in the superior court of the revocation of a habitual offender's license meets the due process requirements of the State and Federal Constitutions. *Hardison v. Shepard*, 246 Ga. 196, 198 (269 SE2d 458) (1980).

[2] These subsections provide for the punishment for marijuana possession, OCGA § 16-13-2 (a), and make it unlawful for any person to purchase possess, or control any controlled substance, OCGA § 16-13-30 (a), or to possess, control, "manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute marijuana." OCGA § 16-13-30 (j).

privilege to operate a vehicle on the public highways. See OCGA §§ 40-1-1, 40-5-1 (16), (17). Since the right to drive is not a fundamental right, the rational basis test applies. *In re Maricopa County,* 160 Ariz. 90 (770 P2d 394, 396) (1989); *Commonwealth v. Strunk,* 400 Pa. Super. 25 (582 A2d 1326, 1327-28) (1990). Under this analysis, " '[i]f the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied.' " *State v. Major,* 243 Ga. 255, 257 (253 SE2d 724) (1979) (quoting *Nebbia v. New York,* 291 U.S. 502 (54 SC 505, 78 LE 940) (1934)).

The state lists the purposes of OCGA § 40-5-75 as punishment of current drug offenders, deterrence of future offenders, reduction of the distribution of illegal drugs, and protection of citizens on state roads. The legislature has determined that driving under the influence of drugs "constitute[s] a direct and immediate threat to the welfare and safety of the general public." See OCGA § 40-5-55 (a). We conclude that the desire to ensure safe driving and discourage illegal drug use is reasonably related to the statute's mandatory suspension of driver's licenses and attendance at a drug reduction program. The license suspension reduces the mobility of drivers possessing drugs and curtails the transportation of illegal drugs. The drug reduction program decreases the use of drugs.

This rational relationship between the law and legislative purposes exists even when the conviction for a drug offense is not related to the use of a motor vehicle. The suspension of the drug offender's license furthers the state's interest in reducing the sale and distribution of

drugs by automobile and in promoting public safety. The legislature could reasonably assume that a person who possesses illegal drugs will use the drugs, that a drug user will drive while under the influence of drugs, and that drug use impairs a driver's judgment. Therefore, the statute does not violate due process.[3]

2. Both the State and Federal Constitutions prohibit the state from denying to any person the equal protection of the laws. U.S. Const. amend. XIV, sec. I; Ga. Const. Art. I, Sec. I, Par. II. " 'Under the equal protection guarantee of our State Constitution, classification in legislation is permitted when the classification is based on rational distinctions, and the basis of the classification bears a direct and real relation to the object or purpose of the legislation.' " *Home Materials, Inc. v. Auto Owners Ins. Co.*, 250 Ga. 599, 600 (300 SE2d 143) (1983) (quoting *Cannon v. Georgia Farm Bureau Mutual Ins. Co.*, 240 Ga. 479, 482 (241 SE2d 238)(1978)). The state argues that the statute

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[3] See *Maricopa County*, 770 P2d at 397 (rejecting due process challenge to the mandatory license suspension of juveniles adjudged delinquent for a drug offense that was not related to a vehicle); *State v. Smith*, 58 N.J. 202 (276 A2d 369, 374) (1971) (concluding that requiring temporary forfeiture of a driver's license for a single incident of marijuana use unconnected with actual driving has a reasonable relation to the legislative goals of punishment, deterrence, and rehabilitation); *Commonwealth v. Strunk*, 582 A?d at 1330 (holding that 90-day driver's license suspension based on an underage defendant's conviction of possessing alcohol, which was not related to the operation of a motor vehicle, did not violate substantive due process). See generally Annotation, *Validity of Statute or Regulation Authorizing Revocation or Suspension of Driver's License for Reason Unrelated to Use of or Ability to Operate Motor Vehicle*, 86 ALR3d 1251 (1978 & Supp. 1992).

distinguishes between persons who are convicted drug offenders and persons who are not. Quiller, on the other hand, contends that the classification is between persons convicted of possession of marijuana or a controlled substance and persons convicted of any other crime, such as murder.

Under either classification, the Statute does not violate equal protection. The disparate treatment between persons convicted of illegal drug possession and persons convicted of other crimes bears a reasonable relationship to the statute's purpose in deterring drug use, curtailing the distribution of drugs, and protecting motorists. Committing the crimes of murder, assault, rape, and other violent acts, although dangerous, do not normally interfere with the driving ability of the offender. In contrast, the driving judgment and ability of a person who possesses and uses illegal drugs, like a juvenile who illegally possesses and drinks alcohol is likely to be impaired.[4]

3. The remaining enumeration of error is without merit.

Judgment affirmed. Clark, C.J., Hunt, P.J., Benham and Sears-Collins, JJ., and Judge W. J. Forehand, concur. Hunstein, J., not participating.

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[4] See *State v. Lawton*, 588 SO2d 73 (Fla. App. 1991) (reversing trial court ruling that mandatory suspension of an offender's driving privileges after conviction for possession of marijuana was unconstitutional); cf. *Maricopa County*, 770 P2d at 396 (holding suspension of juvenile drug offender's license does not violate equal protection even though no similar provision exists to punish adult drug offenders).

[seal]
Supreme Court
State of Georgia
STATE JUDICIAL BUILDING
Atlanta 30334

HAROLD G. CLARKE, CHIEF JUSTICE
CHARLES I. WELTNER, PRESIDING JUSTICE
RICHARD BELL
WILLIS S. HUNT, JR.
ROBERT BENHAM
NORMAN S. FLETCHER
LEAH J. SEARS-COLLINS
JUSTICES

JOLINE B. WILLIAMS, CLERK
WM. SCOTT HENWOOD, REPORTER

JUL 23, 1992

TO ALL COUNSEL:

RE: Application No. S92D1208, FERRIS L. QUILLER v. RONALD BOWMAN, COMR.

The Court today granted this application for *discretionary* appeal. All the Justices concur.

Your notice of appeal must be filed in the trial court within 10 days from this date. When the record is received from the trial court and docketed in this Court you will be sent a docketing notice showing the date of docketing and the Case Number assigned. The appellant's enumeration of errors and briefs will be due in this Court within 20 days from the date of docketing; the appellee's briefs will be due within 40 days from the date of docketing or within 20 days after the appellant's briefs are filed, whichever is later.

The Court is particularly concerned with, and requests that you address in your briefs, the following:

The constitutionality of OCGA § 40-5-75.

Joline B. Williams, Clerk
BY: /s/ Lynn M. Stinchcomb

IN THE SUPERIOR COURT OF UPSON COUNTY
STATE OF GEORGIA

FERRIS L. QUILLER, Appellant, v. RONALD BOWMAN, Commissioner, Georgia Department of Public Safety, Appellee.	*	CIVIL ACTION NO. 92V-199

ORDER

The above-styled action, having come before this Honorable Court on Appellant's appeal from the decision of the Department of Public Safety, and having been considered, is hereby DISMISSED for the reasons set forth below.

STATEMENT OF FACTS

Appellant, Ferris L. Quiller, was convicted on November 26, 1991, in Upson County Superior Court, Case No. 91R27, for violating the Georgia Controlled Substances Act. Appellant's crime did not involve a motor vehicle. Appellant was notified by the Department of Public Safety that pursuant to O.C.G.A. § 40-5-75, his driving privileges were suspended. Appellant requested a hearing before the Department of Public Safety, which was held on February 13, 1992. After the hearing, the hearing officer upheld the suspension of Appellant's driver's license because of his conviction for violating the

Georgia Controlled Substances Act. The hearing officer's decision was based upon the statutory authority in O.C.G.A. § 40-5-75.

Appellant then filed an appeal pursuant to O.C.G.A. § 40-5-66 in the Superior Court of Upson County challenging the constitutionality of O.C.G.A. § 40-5-75.

CONCLUSIONS OF LAW

The general Assembly has the authority to provide penalties and sanctions for criminal behavior. *Johnson v. State,* 169 Ga. 814 (1929). Appellant argues that the statute which mandates that the Department of Public Safety suspend his driver's license for conviction of violating the Georgia Controlled Substances Act is unconstitutional. The General Assembly, by enacting O.C.G.A. § 40-5-75, set out to provide a deterrent against committing drug offenses by requiring the suspension of driving privileges for a conviction of the Georgia Controlled Substances Act.

The Legislature may also classify and provide penalties applicable to different classes as long as the classification is fair and reasonable. *Leonard v. American Life & Annuity Co.,* 139 Ga. 274 (1913). The classification existing in O.C.G.A. § 40-5-75 is between those persons whose license has been suspended for a conviction of violating the Georgia Controlled Substances Act and those persons whose license has been suspended for convictions of other offenses.

The privilege of owning a driver's license is not a constitutional right, nor are those individuals who maintain a Georgia driver's license, members of a suspect classification. Therefore, the rational basis test is the standard to be applied to this statute. As long as there is a reasonable relation to a legitimate governmental purpose, this statute passes constitutional muster. *McDaniel v. Thomas,* 248 Ga. 632, 638-39 (1981). The legitimate governmental purpose of O.C.G.A. § 40-5-75 is the protection of the citizens of the State of Georgia from those individuals, lawfully convicted of violating the Georgia Controlled Substances Act, who are dangerous, negligent or incompetent and are a direct and immediate threat to the welfare and safety of the public. The classification in O.C.G.A. § 40-5-75 is reasonably related to the legitimate governmental purpose of protecting the citizens of the State of Georgia. Those persons convicted of violating the Georgia Controlled Substances Act could reasonably be considered more dangerous than those who have not been convicted of violating the Act. Therefore, O.C.G.A. § 40-5-75 is clearly constitutional.

Furthermore, it is not necessary that Appellant be convicted of a crime involving a motor vehicle before the Department of Public Safety may suspend his driving privileges pursuant to O.C.G.A. § 40-5-75. Consequences for criminal activity are not required to coincide directly with the crime committed. *See,* e.g., O.C.G.A. § 16-11-131 (prohibition against a convicted felon possessing a firearm); Ga. Const. Art. II, § I, ¶ III (convicted felons denied the right to vote).

CONCLUSION

For the above and foregoing reasons, Appellant's appeal of the Department of Public Safety's decision to suspend Appellant's driving privileges pursuant to O.C.G.A. § 40-5-75 is DISMISSED. This Honorable Court finds that O.C.G.A. § 40-5-75, providing for the suspension of a driver's license for a conviction of violating the Georgia Controlled Substances Act, is constitutional.

SO ORDERED, this 3rd day of June, 1992.

/s/ Paschal A. English, Jr.
PASCHAL A. ENGLISH, JR.
Judge
Griffin Judicial Circuit

Submitted by:

KAY BAKER
132 State Judicial Building
40 Capitol Square, S.W.
Atlanta, Georgia 30334

DATE 02-13-92
TIME 10:00AM

SUBJECT: Hearing Petition for Reinstatement of License # 33366284
DOB 02-04-72

NAME AND ADDRESS: Ferris L. Quiller
1039 Plater St.
Thomaston, Ga. 30286 9248

TO: COMMISSIONER, Department of Public Safety
Atlanta, Georgia

1. Above named petitioner appeared before the undersigned this date for a hearing of his petition for reinstatement of his driver's license.

   (a) Testifying in behalf of petitioner:
   A.C. Allen, attorney
   P. Buttoro, attorney

   (b) Testifying against petitioner:
   DPS Records

2. All evidence and recommendations being heard and due consideration being given, the following decision is hereby rendered:

DECISION: It is the decision of the hearing officer to uphold the suspension for a conviction of controlled substance violation.

/s/ Sgt. Jerrell Tanner
HEARING OFFICER

ENCL.
1 file
2 attorney

DEPARTMENT OF PUBLIC SAFETY
HEARING UNIT
P.O. BOX 1438
ATLANTA, GEORGIA, 30371-2302

ORDER FOR HEARING ON SUSPENSION OF LICENSE

FERRIS L. QUILLER
1039 PLATER ST.
THOMASTON, GA 30286 9248

RE: Driver's License # 33366284
Issued to
FERRIS L. QUILLER
Date of Birth: 02-04-72

This will acknowledge receipt of request for a hearing concerning driver's license in caption.

Therefore, SGT. J. TANNER of the Georgia State Patrol is hereby designated official representative of the Department to conduct the hearing, and based on your record and information submitted to him, render a decision as to whether or not any consideration should be given prior to the expiration of the suspension period, such hearing to be held in accordance with rule 570-1-.06 of the Rules and Regulations of the Department of Public Safety.

The Decision of the Hearing Officer shall be final unless licensees desires to appeal the decision to the Superior Court of the county of his resident OR to the Superior Court of Fulton County. Appeal must be made within 30 days from the date the Department enters its decision or order as stated in O.C.G.A. 40-5-66.

All parties of interest, are hereby notified to show cause, if they wish, before the Hearing Officer designated, on the 13 day of FEBRUARY, at 10:00 A.M. in the GEORGIA STATE PATROL, 622 NORTH CHURCH ST., THOMASTON why the driver's license referred to above should not be held for the full suspension period as ordered.

Given under the Seal of the Department of Public Safety, this 28 day of JANUARY, 1992

/s/ W.F. Rooks
LT. W.F. ROOKS,
SUPERVISOR
HEARING UNIT

WFR/bas
CZ: ERIC D. HEARN, ATTY. AT LAW.

Griffin Judicial Circuit

UPSON County Superior Court
NOVEMBER Term, 1990
SPECIAL PRESENTMENT
No. 91-R-27

CLARENCE COX
Prosecutor

True Bill
/s/ Neil Hightower
Foreman

N.A.G 8-16-91

W. Fletcher Sams
District Attorney

State of Georgia
vs.

FARRIS QUILLER a/k/a
FERRIS QUILLER

Charge:

COUNT 1: VIOLATION
GEORGIA CONTROLLED
SUBSTANCES ACT

Witnesses
*indicates Grand Jury
Witness
ERIC HARRIS -
c/o UCSO
CLARENCE COX -
c/o USCO
Kathryn P. Lee =
State Crime Lab
1019 Second St.,
Macon, GA 31201
(912) 751-3198 -
B90-04500

Returned in open court this 25th day
of Jan. , 1991 .
/s/ Nancy Adams Clerk, Superior Court

Plea of Defendant

The defendant(s) FARRIS QUILLER a/k/a FERRIS QUILLER waives formal arraignment and plead(s) Not Guilty .

This 26th day of August , 1991 .

/s/ Ferris Quiller
Defendant

(Assistant)
District Attorney

Defendant

/s/ Eric D. Hearn
Defendant's Attorney

Defendant's Attorney

Verdict

We, the jury, find the defendant Guilty

This 20 day of NOVEMBER , 1991 .

/s/ William C. Crews
Foreperson

BILL OF INDICTMENT

GEORGIA, UPSON COUNTY:

IN THE SUPERIOR COURT OF SAID COUNTY

The Grand Jurors, selected, chosen, and sworn for the County of UPSON , to wit:

1. NEIL HIGHTOWER , Foreman
2. James C. Smith, Jr.
3. ~~Cherry C. Burke~~ exc NN
4. Doris E. Arrington
5. Larry G. Salter
6. ~~Elenor Ellerbee~~ exc NH
7. Brian K. Blount
8. ~~Evelyn White~~ exc NH
9. Gloria P. Ormand
10. Michael S. Austin
11. Pamela D. Jenkins
12. Earnest L. Fordham
13. Derward W. Fuller
14. Calvin Ivey
15. Delinda L. Elliott
16. Mary G. McDougald
17. ~~Rachel Trice~~ exc NH
18. Vanessa A. Walker
19. ~~Susan S. Meon~~ exc NH
20. Allen D. Chambley
21. Mary J. Copeland
22. Phyllis Giacalone
23. ~~Kathleen G. Bright~~ exc NN

In the name and behalf of the citizens of Georgia, charge and accuse FARRIS QUILLER a/k/a FERRIS QUILLER with the offense of VIOLATION GEORGIA CONTROLLED SUBSTANCES ACT for that the said FARRIS QUILLER a/k/a FERRIS QUILLER in the County and State aforesaid, on the 5th day of September , in the Year of Our Lord Nineteen Hundred and Ninety , did, knowingly sell a quantity of Cocaine, a controlled substance, in violation of the Georgia Controlled Substances Act, contrary to the laws of said State, the good order, peace and dignity thereof.

W. Fletcher Sams, District Attorney

IN THE SUPERIOR COURT
OF UPSON COUNTY, GEORGIA FINAL DISPOSITION
CRIMINAL ACTION
NO. 91 R 27

VS.

Farris Quiller

OFFENSE(S)
Violation Georgia
Controlled
Substances Act

November TERM, 1991

[ ] PLEA:

[ ] NEGOTIATED [X] JURY

[ ] GUILTY ON COUNT(S) ___ [ ] NON-JURY

[ ] NOLO CONTENDERE ON COUNT(S) _____

[ ] TO LESSER INCLUDED OFFENSE(S) _____

ON COUNT(S) _____

[X] VERDICT:

[X] GUILTY ON COUNT(S) 1

[ ] NO GUILTY ON COUNT(S) _____

[ ] GUILTY OF INCLUDED OFFENSE(S) OF _____

ON COUNT(S) _____

[ ] OTHER DISPOSITION

[ ] NOLLE PROSEQUI ORDER ON COUNT(S) _____

[ ] DEAD DOCKET ORDER ON COUNT(S) _____

(SEE SEPARATE ORDER)

[ ] DEFENDANT WAS ADVISED OF HIS/HER RIGHT TO HAVE THIS SENTENCE REVIEWED BY THE SUPERIOR COURTS SENTENCE REVIEW PANEL

[X] FELONY SENTENCE
[ ] MISDEMEANOR SENTENCE

WHEREAS, the above-named defendant has been found guilty of the above-stated offense. WHEREUPON, it is ordered and adjudged by the Court that the said defendant is hereby sentenced to confinement for a period of 5 years probation, 30 days in County Jail, first year on Intensive Probation.

In the State Penal System or such other institution as the Commissioner of the State Department of Corrections or Court may direct to be computed as provided by law. HOWEVER, It is further ordered by the Court.

[X] 1) THAT the above sentence may be served on probation.

[ ] 2) THAT upon service of ___ of the above sentence, the remainder of ___ may be served on probation PROVIDED that the said defendant complies with the following general and other conditions herein imposed by the Court as a part of this sentence.

[X] GENERAL CONDITIONS OF PROBATION

The defendant, having been granted the privilege of serving all or part of the above-named sentence or probation,

hereby is sentenced to the following general conditions of probation:

✓ 1) Do not violate the criminal laws of any governmental unit.

✓ 2) Avoid injurious and vicious habits - especially consuming alcohol and narcotics and other dangerous drugs unless prescribed lawfully.

✓ 3) Avoid persons or places of disruptive or harmful character.

✓ 4) Report to the Probation Parole Supervisor as directed and permit such Supervisor to visit him/her at home or elsewhere.

✓ 5) Work faithfully at suitable employment and so far as may be possible.

✓ 6) Do not change his/her present place of abode, move outside the jurisdiction of the Court, or leave the State for any period of time without prior permission of the Probation Supervisor.

✓ 7) Support his(her) legal dependents to the best of his(her) ability.

✓ 8) Probationer shall from time to time upon oral or written request by any Probation Officer, produce a breath, urine, and/or blood specimen for analysis for the possible presence of a substance prohibited or controlled by any law of the State of Georgia or of the United States.

9. See Exhibits "A" & "B" [X] OTHER CONDITIONS OF PROBATION $50.00 POTF

IT IS FURTHER ORDERED that the defendant pay a fine in the amount of $5000.00, plus ___, whichever is less pursuant to O.C.G.A. 15-21-70, and pay restitution in the amount of $15/mo. Probation Fee ___ Court Costs ___ Attorney's Fees.

Payments are: Probation Fee to begin 12/01/91. Pay $500.00 for Jail Construction Fee

Pay $60.00 for Community Service Fees. Fine and fees to be paid at the rate of $220.00 per month beginning December, 1991.

IT IS THE FURTHER ORDER of the Court, and the defendant is hereby advised that the Court may, at any time, revoke any conditions of this probation and/or discharge the defendant from probation. The probationer shall be subject to arrest for violation of any condition of probation herein granted. If such probation is revoked, the Court may order execution of the sentence which was originally imposed or any portion thereof in the manner provided by law after deducting therefrom the amount of time the defendant served on probation.

The Defendant was represented by the Honorable Eric Hearn Attorney at Law, Pike County, by (Employment Appointment).

By the Court 11/26 1991

So ordered this 26th day of November 1991

/s/ Ben J. Miller

Judge, Upson Superior Court

CERITIFICATE OF SERVICE

This to certify that a true and correct copy of this Sentence of Probation has been delivered in person the defendant and he/she instructed regarding the conditions as set forth above.

This 26th day of November 1991

/s/ Carter Waller
Probation Officer

Copy received and instructions regarding conditions acknowledged.

This 26th day of November 1991

/s/ Ferris Quiller
Probationer

OPPOSITION

BRIEF

Supreme Court, U.S.
FILED
JUN 24 1993
OFFICE OF THE CLERK

(2)

No. 92-1887

In The

Supreme Court of the United States

October Term, 1992

FERRIS L. QUILLER,

Petitioner,

v.

SID MILES, Commissioner,
Georgia Department of
Public Safety,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Georgia

BRIEF FOR THE RESPONDENT IN OPPOSITION

DARYL A. ROBINSON
Counsel of Record
for Respondent
Senior Assistant
Attorney General

MICHAEL J. BOWERS
Attorney General

KAY BAKER
Staff Attorney

Please serve:

DARYL A. ROBINSON
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
(404) 656-9622

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

QUESTIONS PRESENTED

I.

Did the State violate a convicted drug offender's right to due process and equal protection by suspending his driving privileges as a result of his conviction for violating the Georgia Controlled Substances Act?

II.

Should the Court consider whether O.C.G.A. § 40-5-75 was appropriately applied to Petitioner since he failed to preserve this issue for review by asserting it in a timely manner below?

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No. 92-1887

In The

Supreme Court of the United States

October Term, 1992

FERRIS L. QUILLER,

Petitioner,

v.

SID MILES, Commissioner,
Georgia Department of
Public Safety,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Georgia

BRIEF FOR THE RESPONDENT IN OPPOSITION

This Court has jurisdiction pursuant to 28 U.S.C. § 12579(a) because a state statute is being challenged on constitutional grounds.

PART ONE

STATEMENT OF THE CASE

Petitioner was convicted in November, 1991, of violating the Georgia Controlled Substances Act, O.C.G.A. § 16-13-30 et. seq., and was sentenced to 30 days in jail and five years probation. (App. 21-25). As a result of that

conviction, the Georgia Department of Public Safety, (hereinafter "Department"), pursuant to O.C.G.A. § 40-5-75, suspended Petitioner's driving privileges, with the option of reinstatement after a certain period of time and upon the completion of a Drug Risk Reduction Program. O.C.G.A. § 40-5-75(d).

Petitioner requested and received a hearing before the Department, arguing that the statute, O.C.G.A. § 40-5-75, was unconstitutional in that it allowed for the suspension of his driver's license even though his crime did not involve the use of a motor vehicle. The hearing officer upheld the Department's decision, and Petitioner appealed to the superior court, again arguing that the statute under which the Department suspended his driver's license was unconstitutional. The trial court found that O.C.G.A. § 40-5-75 was constitutional since the legislature could reasonably find that those persons convicted of violating the Georgia Controlled Substances Laws are more dangerous to the public than those who have not violated the said laws. (App. 13).

In his Application for Discretionary Review before the Georgia Supreme Court, Petitioner raised only the issue of the constitutionality of O.C.G.A. § 40-5-75. The Georgia Supreme Court granted review only on the issue of whether O.C.G.A. § 40-5-75 was constitutional. (App. 9-10). Petitioner did not allege that the statute was improperly applied to him until he filed his brief before the Georgia Supreme Court.

The Georgia Supreme Court found that the statute in question, O.C.G.A. § 40-5-75, did not violate equal protection or substantive due process, and that Petitioner had not challenged the statute on procedural due process grounds. (App. 4-8). Further, the court found that Petitioner's second issue, whether the statute was appropriately applied to him, was without merit. (App. 8).

PART TWO

REASONS FOR NOT GRANTING THE WRIT

I. THE GEORGIA STATUTE WHICH MANDATES THE SUSPENSION OF A DRIVER'S LICENSE AFTER A CONVICTION UNDER THE GEORGIA CONTROLLED SUBSTANCES ACT DOES NOT VIOLATE DUE PROCESS OR EQUAL PROTECTION.

A. Petitioner did not challenge the statute as violative of procedural due process.

The State has the authority under its police powers to enact reasonable laws regulating the use and operation of motor vehicles upon the public highways. *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959); *see also Dennis v. State*, 226 Ga. 341, 175 S.E.2d 17 (1970). The statute in question, O.C.G.A. § 40-5-75, provides, in pertinent part:

> The driver's license of any person convicted of possession of a controlled substance or marijuana in violation of subsection (b) of Code Section 16-13-2 or subsection (a) or (j) of Code Section 16-13-30 shall by operation of law be suspended. . . .

O.C.G.A. § 40-5-75(a). The Department is authorized to reinstate the license only if the person completes a Drug Risk Reduction Program or a DUI program and pays a restoration fee. O.C.G.A. § 40-5-75(d).

The Georgia Constitution provides that "No person shall be deprived of life, liberty, or property except by due process of law." GA. CONST. art. I, § 1, ¶ 1. *See also* U.S. CONST. amend. XIV, § 1. The United States Supreme Court has held that a driver's license is a property interest that may not be denied without *procedural* due process of law. *See, e.g., Bell v. Burson,* 402 U.S. 535 (1971) (emphasis added). The Georgia Supreme Court found that Petitioner did not challenge the statute as a violation of procedural due process. (App. 4, n. 1). Therefore, the court did not address that issue.

B. There is no substantive due process right to a driver's license.

This Court has never held that a person has a substantive due process right to maintain a driver's license. In *Bell v. Burson, supra,* this Court found that a person has a property interest in a driver's license which cannot be denied without procedural due process, but did not recognize a substantive due process right to the license.

In an abundance of caution, the Georgia Supreme Court conducted a due process analysis of the statute in question, although such an analysis was unnecessary in light of the fact that the only due process right afforded a licensee is that of procedure. *Id.* Under the rational basis test, as long as the law has a reasonable relationship to a proper legislative purpose, and neither the statute nor the

purpose is arbitrary or discriminatory, the due process requirements are satisfied. *Nebbia v. New York*, 291 U.S. 502 (1934); *accord State v. Major*, 243 Ga. 255, 253 S.E.2d 724 (1979).

It is the province of the legislative branch to define crimes and ordain punishment. *Dowling v. United States*, 473 U.S. 207 (1985). The Georgia Legislature is invested with that same duty. *See Johnson v. State*, 169 Ga. 814, 152 S.E. 76 (1929). When the legislature enacted O.C.G.A. § 40-5-75, they set out to provide not only consequences and punishment for convicted drug offenders, but also a deterrent against drug offenders driving while under the influence of drugs. The Georgia Supreme Court noted that deterrence of future offenders, reduction of the distribution of illegal drugs, and protection of the citizens of the State of Georgia from drug offenders are other purposes of O.C.G.A. § 40-5-75. The court found that the legislature determined that persons driving while under the influence of drugs constitute "a direct and immediate threat to the welfare and safety of the general public." (App. 6). *See* O.C.G.A. § 40-5-55.

The court concluded that "the desire to ensure safe driving and discourage illegal drug use is reasonably related to the statute's mandatory suspension of driver's licenses and attendance at a drug reduction program." (App. 6). The court also found that the "license suspension reduces the mobility of drivers possessing drugs and curtails the transportation of illegal drugs," and that "the drug reduction program decreases the use of drugs." (App. 6).

The Georgia Supreme Court held that the rational relationship between the legitimate governmental purpose and the statute exists even if the drug offense does not involve the use of a motor vehicle. The court correctly reasoned that the suspension of the drug offender's license furthers the state's interest in reducing the sale and distribution of drugs by car, and in promoting public safety. (App. 6-7). The court determined that "the legislature could reasonably assume that a person who possesses illegal drugs will use the drug, that a drug user will drive while under the influence of drugs, and that drug use impairs a driver's judgment." (App. 7).

As a result of this analysis, the Georgia Supreme Court found that the statute in question, O.C.G.A. § 40-5-75, did not violate substantive due process. (App. 7).

C. The statute in question does not violate equal protection since there is a rational relationship between the statute in question and the legislative purpose of the statute.

The Georgia Supreme Court also found that the statute does not violate equal protection. The court noted that, although both the state and federal constitutions prohibit the state from denying any person the equal protection of the laws, as long as the classification as it exists in the statute is based upon rational distinctions, and the basis of the classification bears a direct and real relation to the object or purpose of the legislation, a classification in legislation is permitted. (App. 7); *Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869 (1985). *See also*

Home Materials, Inc. v. Auto Owners Ins. Co., 250 Ga. 599, 300 S.E.2d 139 (1983) (*quoting Cannon v. Ga. Farm Bureau Mutual Ins. Co.*, 240 Ga. 479, 241 S.E.2d 238 (1978)). The legislature can classify and provide penalties applicable to different classes as long as the classification is fair and reasonable. *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356 (1973); *see also Leonard v. American Life and Annuity Co.*, 139 Ga. 274, 77 S.E. 41 (1913).

Since the privilege to maintain a driver's license is not a fundamental right or a suspect classification, the appropriate test to be applied is the rational basis test. Under the rational basis test a statutory classification is presumed valid and will comport with constitutional standards as long as it bears a reasonable relationship to a legitimate governmental purpose. *FCC v. Beach Communications, Inc.*, 61 U.S.L.W. 4526 (June 1, 1993); *McDaniel v. Thomas*, 248 Ga. 632, 285 S.E.2d 156 (1981).

The court found that the "disparate treatment between persons convicted of illegal drug possession and persons convicted of other crimes bears a reasonable relationship to the statute's purpose in deterring drug use, curtailing the distribution of drugs, and protecting motorists." (App. 8).

II. THIS COURT SHOULD NOT CONSIDER WHETHER THE STATUTE, O.C.G.A. § 40-5-75, WAS APPROPRIATELY APPLIED TO PETITIONER SINCE THIS ISSUE WAS NOT PROPERLY RAISED AT THE ADMINISTRATIVE LEVEL OR BEFORE THE TRIAL COURT.

Petitioner alleges that the statute in question was improperly applied to him because he was not convicted of O.C.G.A. § 16-13-30 (a) or (j). Petitioner failed to raise this issue prior to his Brief to the Supreme Court of Georgia. Respondent submits that this issue is not properly before this Court for review, for the same reasons this issue was not properly before the Supreme Court of Georgia for review. *Jimmy Swaggart Ministries v. Bd. of Equalization of California,* 493 U.S. 378 (1990); *City of Atlanta v. Columbia Pictures,* 218 Ga. 714, 130 S.E.2d 490 (1963).

This issue was not raised at the administrative agency hearing, was not raised in the superior court, nor was it brought before the Supreme Court of Georgia in Petitioner's application for Discretionary Appeal. Not until Petitioner filed his Brief to the Georgia Supreme Court did he raise this issue for consideration. The Georgia Supreme Court simply found that this claim had no merit without further addressing the question.

CONCLUSION

This Court should refuse to grant a writ of certiorari to the Supreme Court of Georgia as it is manifest that the questions presented to this Court for review were correctly decided and the issues were adequately addressed by the Supreme Court of Georgia.

Respectfully submitted,

DARYL A. ROBINSON 610012
Counsel of Record
for Respondent
Senior Assistant
Attorney General

MICHAEL J. BOWERS 071650
Attorney General

KAY BAKER 033820
Staff Attorney

Please serve:

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40 Capitol Square, S.W.
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